

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

Judith C. Halliday

v.

Civil No. 10-cv-535-SM

U.S. Postal Service

ORDER

Re: Document No. 8, MOTION to Dismiss Amended Complaint

Ruling: Denied. The United States is the only proper party in a Federal Tort Claims Act suit for damages. The amended complaint is construed to name the United States as a party defendant, references to the GSA and USPS are taken as references to the United States. The amended complaint, as it applies to the United States, cannot be dismissed for the reasons given in the memorandum filed by the United States Attorney (doc. no. 9), because the plaintiff's allegations, taken as true for this purpose, assert negligence on the part of federal employees acting within the scope of their employment duties that is distinct from the actions and obligations of the independent contractor. That is, construing the complaint liberally, plaintiff alleges that federal employees had knowledge of a dangerous condition, and its foreseeable consequences, and, despite a personal legal duty to do so, failed to either warn of or take steps to have the condition remedied. Plainly, the United States is not liable for the acts or omissions of its independent contractor (improper maintenance, etc.), and it may be that plaintiff's independent claims of negligence against federal employees will prove fatally weak, but at this stage, the complaint does purport to assert negligence claims against federal employees distinct from those asserted against the independent contractor. See, e.g. Miller v. George Arpin & Sons, Inc., 949 F. Supp. 961 (D.R.I. 1997).


Steven J. McAuliffe
Chief Judge

Date: May 6, 2011

cc: T. David Plourde, AUSA
John K. Bosen, Esq.